

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mark Johnson v. Frank Bisignano, Commissioner of Social Security

Johnson v. Bisignano · No. 2:24-cv-02444-EFB (SS) · Decided September 18, 2025

SUMMARY

The United States District Court for the Eastern District of California reviews a Social Security disability benefits determination following a prior remand from the Court of Appeals. The court concludes that substantial evidence supports the ALJ’s findings regarding the paragraph C.2 criteria, residual functional capacity, medical opinions, plaintiff’s testimony, and third-party evidence. Plaintiff’s motion for summary judgment is denied, and the Commissioner’s motion for summary judgment is granted.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Edmund F. Brennan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 18, 2025
DOCKET	2:24-cv-02444-EFB (SS)
DISPOSITION	other
PROCEDURAL POSTURE	Action for judicial review under 42 U.S.C. § 405(g) of a Social Security Administration decision denying disability insurance benefits; the parties filed cross-motions for summary judgment.
STANDARD OF REVIEW	The court reviewed the Commissioner's decision for substantial evidence and legal error, considering the record as a whole. It upheld the ALJ's findings where the evidence was susceptible to more than one rational interpretation and applied harmless-error principles to any alleged error.
PRECEDENTIAL VALUE	unpublished district court opinion; nonprecedential
PARTIES	Mark Johnson v. Frank Bisignano, Commissioner of Social Security

TOPICS

- judicial review of agency action
- administrative law
- standard of review
- harmless error
- appellate procedure

PRACTICE AREAS

Social Security disability benefits

administrative law

judicial review of agency action

appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the ALJ's finding that Johnson did not satisfy paragraph C.2 of Listings 12.04, 12.06, or 12.15.
2. Whether substantial evidence supported the ALJ's residual functional capacity determination and evaluation of medical opinions.
3. Whether the ALJ gave legally sufficient reasons for discounting Johnson's subjective symptom testimony.
4. Whether the ALJ provided a sufficient basis for partially discounting third-party evidence from Kelli Hoppe.

HOLDINGS

1. The ALJ's finding that Johnson did not establish marginal adjustment under paragraph C.2 was supported by substantial evidence. Evidence that Johnson attended Alcoholics Anonymous meetings, traveled, managed insurance changes, pursued activities such as joining a gym, and adapted to treatment and medication changes reasonably supported a finding of greater-than-marginal adjustment without the required exacerbation of symptoms or deterioration in functioning.
2. The RFC determination was supported by substantial evidence, and the ALJ reasonably evaluated the medical opinions using the supportability and consistency factors. The ALJ permissibly found the opinions of Drs. Brode and Zukowsky persuasive, partially credited Dr. Giannuli's opinion, and found the opinions of Paoli, Dr. Smith, and Anglim less persuasive.
3. The ALJ provided specific, clear, and convincing reasons for discounting Johnson's testimony concerning the severity of his memory, concentration, and interpersonal limitations.
4. The ALJ provided a germane and reasonable basis for partially discounting Kelli Hoppe's third-party function report, relying on conflicts between her broad descriptions and clinical findings, Johnson's reported activities, and examination observations.

KEY QUOTATIONS

““Marginal adjustment” means that your adaptation to the requirements of daily life is fragile; that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.” (AR 446-47)

“The reasons that the ALJ provided for rejecting plaintiff’s representations of the intensity, persistence, and limiting effects of his symptoms were “specific, clear and convincing,”” (AR 450-51)

FACTUAL BACKGROUND

Johnson alleged disability beginning May 12, 2012, based principally on a hip replacement, PTSD, depression, anxiety, and other impairments. His insured status expired December 31, 2017. The ALJ found that he had

severe physical and mental impairments but retained the residual functional capacity for medium work with postural, environmental, social, and mental restrictions, and that significant numbers of jobs existed that he could perform.

PROCEDURAL HISTORY

Johnson applied for disability insurance benefits in 2017, and an ALJ found him not disabled in 2018. After the Appeals Council denied review, the district court entered judgment for the Commissioner in 2021, but the Court of Appeals reversed and remanded because the ALJ had not determined whether Linda Paoli's letter contained medical opinions. On remand, a new ALJ again found Johnson not disabled. Johnson filed this action without again seeking Appeals Council review, and the court denied his motion for summary judgment and granted the Commissioner's cross-motion.

DISPOSITION

other

CASES CITED

- Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1194 (9th Cir. 2004)
- Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1052, 1055-56 (9th Cir. 2006)
- Ford v. Saul, 950 F.3d 1141, 1148-49, 1154 (9th Cir. 2020)
- Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)
- Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001)
- Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001)
- Biestek v. Berryhill, 587 U.S. 97, 99, 103 (2019)
- Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002)
- Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)
- Dickinson v. Zurko, 527 U.S. 150, 153 (1999)
- Hill v. Astrue, 698 F.3d 1153, 1159 (9th Cir. 2012)
- Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)
- Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007)
- Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)
- Shinseki v. Sanders, 556 U.S. 396, 409 (2009)
- Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012)
- Woods v. Kijakazi, 32 F.4th 785, 791-94 (9th Cir. 2022)
- Smith v. Bowen, 849 F.2d 1222, 1225-26 (9th Cir. 1988)
- Dale v. Colvin, 823 F.3d 941, 944 (9th Cir. 2016)
- Tommasetti v. Astrue, 533 F.3d 1035, 1041-42 (9th Cir. 2008)
- Lingenfelter v. Astrue, 504 F.3d 1028, 1040, 1042 (9th Cir. 2007)
- Benton v. Barnhart, 331 F.3d 1030, 1040 (9th Cir. 2003)

- Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 603 (9th Cir. 1999)
- Warre v. Comm’r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006)
- Garrison v. Colvin, 759 F.3d 995, 1014-15 (9th Cir. 2014)
- Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)
- Chaudhry v. Astrue, 688 F.3d 661, 672-73 (9th Cir. 2012)
- Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008)
- Osenbrock v. Apfel, 240 F.3d 1157, 1165-66 (9th Cir. 2001)
- Smartt v. Kijakazi, 53 F.4th 489, 499 (9th Cir. 2022)
- Russell v. Bowen, 856 F.2d 81, 83 (9th Cir. 1988)
- Vincent v. Heckler, 739 F.2d 1393 (9th Cir. 1984)

OPINION

Mark Johnson v. Frank Bisignano, Commissioner of Social Security
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MARK JOHNSON, No. 2:24-cv-02444-EFB (SS)

12 Plaintiff, 13 v. ORDER

14 FRANK BISIGNANO,

Commissioner of Social Security,¹ 15 Defendant. 16 17 Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security 18 denying his application for Social Security disability benefits under 42 U.S.C. § 405(g). ECF No. 19 1. Pending before the court are the parties’ cross-motions for summary judgment. ECF Nos. 12, 20 16.2 For the reasons provided below, plaintiff’s motion for summary judgment is denied, and the 21 Commissioner’s motion for summary judgment is granted. 22 //// 23 //// 24 //// 25 1 Frank Bisignano is substituted as respondent pursuant to Federal Rule of Civil Procedure 26 25(d). 27 2 The parties have consented to the jurisdiction of a United States Magistrate Judge for all proceedings in this action, including judgment, pursuant to 28 U.S.C. 636(c)(1). ECF No. 6. 28 1 I. Background 2 In May 2017, plaintiff filed an application for disability insurance benefits under Title II 3 of the Social Security Act, alleging disability beginning on May 12, 2012. Administrative Record 4 (AR) 168; see AR 441.3 Plaintiff alleged disability due to his hip replacement, post-traumatic 5 stress disorder (PTSD), and high blood pressure. AR 189. His application was denied on August 6 15, 2017, AR 96-99, and his request for reconsideration was denied in November 2017. AR 101- 7 05. He requested a hearing, which was held in August 2018, AR 35, and on October 9, 2018, the 8 ALJ issued a decision finding plaintiff not disabled. AR 16-34. Plaintiff sought review by the 9 Appeals Council, which was denied in August 2019, AR 1-4, and, on October 11, 2019, he 10 initiated an

action in this court seeking reversal of the agency decision. AR 526-31. The district 11 court granted summary judgment in favor of the agency, in March 2021. AR 513-25. Plaintiff 12 then appealed the judgment and the Court of Appeal reversed on the grounds that the ALJ had 13 failed to address whether a letter submitted by plaintiff, authored by licensed clinical social 14 worker Linda Paoli, contained medical opinions.⁴ AR 495-507. The Court of Appeals vacated 15 the district court's summary judgment order and remanded the matter to the agency on an open 16 record. Ibid. 17 On remand, a hearing was held before an ALJ on February 22, 2024. AR 463-94. The 18 ALJ issued a written decision finding plaintiff not disabled on June 10, 2024. AR 438-62. 19 Plaintiff filed the instant action challenging the agency decision in this court on September 8, 20 2024.⁵ ECF No. 1. 21 3 Defendant lodged the administrative record on October 31, 2024. ECF No. 7. 22 4 As discussed infra, on remand, the ALJ concluded that Ms. Paoli's letter constituted a 23 medical opinion, AR 451-52, but rejected it as unsupported and inconsistent with the other evidence. AR 453 24 5 From the Administrative Record, it appears that plaintiff did not seek review to the 25 Appeals Council prior to filing the instant action. See generally AR. Although a claimant 26 seeking review in federal court of an adverse ALJ decision in the first instance must exhaust his remedies by seeking Appeals Council review, 20 C.F.R. § 404.900; see *Sims v. Apfel*, 530 U.S. 27 103, 105 (2000), if a claimant is challenging the decision of an ALJ following remand from a federal district court, the claimant need not seek review in the Appeals Council again and the 28 decision of the ALJ is the final decision for the purposes of the federal court's review. 20 C.F.R. 1 II. Legal Standard 2 A. The Disability Standard 3 To qualify for disability insurance benefits under the Social Security Act, a claimant must 4 show he is unable "to engage in any substantial gainful activity by reason of any medically 5 determinable physical or mental impairment⁶ which can be expected to result in death or which 6 has lasted or can be expected to last for a continuous period of not less than 12 months." 42 7 U.S.C. § 423(d)(1)(A). The Social Security Regulations set out a five-step sequential evaluation 8 process to be used in determining if a claimant is disabled. 20 C.F.R. § 404.1520; *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1194 (9th Cir. 2004). The five steps in the sequential 10 evaluation in assessing whether the claimant is disabled are: 11 Step one: Is the claimant presently engaged in substantial gainful activity? If so, 12 the claimant is not disabled. If not, proceed to step two. 13 Step two: Is the claimant's alleged impairment sufficiently severe to limit his or her ability to work? If so, proceed to step three. If not, the claimant is not 14 disabled. 15 Step three: Does the claimant's impairment, or combination of impairments, meet 16 or equal an impairment listed in 20 C.F.R., pt. 404, subpt. P, app. 1? If so, the claimant is disabled. If not, proceed to step four. 17 Step four: Does the claimant possess the residual functional capacity ("RFC") to 18 perform his or her past relevant work? If so, the claimant is not disabled. If not, proceed to step five. 19 20 Step five: Does the claimant's RFC, when considered with the claimant's age, education, and work experience, allow him or her to adjust to other work that 21 exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled. 22 23 //// 24 25 § 404.984(d). 26 6

A “physical or mental impairment” is one resulting from anatomical, physiological, or psychological abnormalities that are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 42 U.S.C. § 423(d)(3). 28 1 *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006). At each of these five 2 steps, “the ALJ is responsible for determining credibility, resolving conflicts in medical 3 testimony, and for resolving ambiguities.” *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 2020). 4 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). In steps one through four, the 5 burden of proof is on the claimant. *Ford*, 950 F.3d at 1148. A claimant establishes a prima facie 6 case of qualifying disability once he has carried the burden of proof from step one through step 7 four. *Ibid.* 8 Before making the step four determination, the ALJ first must determine the claimant’s 9 RFC. *Batson*, 359 F.3d at 1194; see 20 C.F.R. § 416.920(e). The RFC is “the most [one] can still 10 do despite [his] limitations” and represents an assessment “based on all the relevant evidence.” 11 20 C.F.R. § 404.1545(a)(1). A determination of RFC is not a medical opinion, but a legal 12 decision that is expressly reserved for the Commissioner. See 20 C.F.R. § 404.1527(d)(2) (RFC 13 is not a medical opinion); 20 C.F.R. § 404.1546(c) (identifying the ALJ as responsible for 14 determining RFC); see also *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“[I]t is the 15 responsibility of the ALJ, not the claimant’s physician, to determine residual functional 16 capacity.”). 17 At step five, the burden shifts to the Commissioner, who must then show that there are a 18 significant number of jobs in the national economy that the claimant can perform given his RFC, 19 age, education, and work experience. 20 C.F.R. § 404.1520(g); *Batson*, 359 F.3d at 1194. If the 20 claimant can perform other work in the national economy, then the claimant may not be found to 21 be disabled. *Ibid.* 22 B. Standard of Review 23 Congress has provided that an individual may obtain judicial review of any final decision 24 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g). In 25 determining whether to reverse an ALJ’s decision, the court reviews only those issues raised by 26 the party challenging the decision. See *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). 27 The court must find the Commissioner’s decision conclusive if it is supported by substantial 28 evidence. 42 U.S.C. § 405(g); *Biestek v. Berryhill*, 587 U.S. 97, 99 (2019). “Substantial evidence 1 is relevant evidence which, considering the record as a whole, a reasonable person might accept 2 as adequate to support a conclusion.” *Thomas v. Barnhart (Thomas)*, 278 F.3d 947, 954 (9th Cir. 3 2002) (quoting *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995)); 4 see also *Dickinson v. Zurko*, 527 U.S. 150, 153 (1999) (comparing the substantial-evidence 5 standard to the deferential clearly-erroneous standard). “[T]he threshold for such evidentiary 6 sufficiency is not high.” *Biestek*, 587 U.S. at 103. Rather, “[s]ubstantial evidence means more 7 than a scintilla, but less than a preponderance; it is an extremely deferential standard.” *Thomas v.* 8 *CalPortland Co. (CalPortland)*, 993 F.3d 1204, 1208 (9th Cir. 2021) (internal quotations and 9 citations omitted); see also *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). Even if the 10 ALJ has erred, the Court may not reverse the ALJ’s decision where the error is harmless, *Stout*, 11 454 F.3d at 1055-56, and the burden of

showing that an error is not harmless “normally falls upon the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009). In conducting its analysis, the reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence.” *Hill v. Astrue*, 698 F.3d 1153, 1159 (9th Cir. 2012) (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). The court may not affirm the ALJ on a ground upon which she did not rely; rather, the court may review only the reasons stated by the ALJ in her decision. *Orn v. Astrue*, 18 495 F.3d 625, 630 (9th Cir. 2007); see also *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). Further, if the evidence “is susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be upheld.” *Ford*, 950 F.3d at 1154 (quoting *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)).

III. The ALJ’s Findings of Fact and Conclusions of Law

In his June 10, 2024 decision, the ALJ found plaintiff not disabled and made the following findings:

1. The claimant last met the insured status requirements of the Social Security Act on December 31, 2017.
2. The claimant did not engage in substantial gainful activity during the period from his alleged onset date of May 12, 2012 through his date last insured of December 31, 2017 (20 CFR 404.1571 et seq.).
3. Through the date last insured, the claimant had the following severe impairments: status-post right hip arthroplasty, obesity, depressive disorder, anxiety disorder, and posttraumatic stress disorder (“PTSD”).
4. Through the date last insured, the claimant did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).
5. After careful consideration of the entire record, the undersigned finds that, through the date last insured, the claimant had the residual functional capacity to perform medium work as defined in 20 CFR 404.1567(c) except the claimant can occasionally climb ramps and stairs and crawl. The claimant can never climb ladders or scaffolds. The claimant can frequently balance, stoop, kneel, and crouch. The claimant cannot work at unprotected heights. The claimant must avoid concentrated exposure to moving mechanical parts. The claimant can understand, remember, and carry out simple, routine, and repetitive tasks using judgment limited to simple work-related decisions. The claimant can occasionally interact with coworkers and the public.
6. Through the date last insured, the claimant was unable to perform any past relevant work (20 CFR 404.1565).
7. The claimant was born on September 18, 1957 and was 54 years old and an individual closely approaching advanced age as of the alleged onset date. The claimant subsequently changed age categories to both advanced age and closely approaching retirement

age prior to the date last insured (20 CFR 404.1563). 18 19 8. The claimant has at least a high school education (20 CFR 404.1564). 20 9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a 21 finding that the claimant is “not disabled,” whether the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, 22 Appendix 2). 23

10. Through the date last insured, considering the claimant’s age, education, work 24 experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that the claimant could have 25 performed (20 CFR 404.1569 and 404.1569a). 26

11. The claimant was not under a disability, as defined in the Social Security Act, 27 at any time from May 12, 2012, the alleged onset date, through December 31, 2017, the date last insured (20 CFR 404.1520(g)). 28 1 AR 443-56. 2 IV. Analysis 3 Plaintiff raises four issues on review. First, he argues that the ALJ’s determination at step 4 three lacked substantial evidence insofar as the ALJ determined plaintiff did not meet the 5 paragraph C.2 criteria for listings 12.04, 12.06, and 12.15 of 20 C.F.R. Part 404, Subpart P,

6 Appendix 1. ECF Nos. 12 at 5-11, 19 at 1-9. Second, he argues that there is not substantial 7 evidence to support the RFC determination because the ALJ unreasonably relied on the opinions 8 of persons who had not examined plaintiff. ECF Nos. 12 at 11-18, 19 at 9-13. Third, plaintiff 9 argues that the RFC determination lacked substantial evidence because the ALJ unreasonably 10 discounted his testimony. ECF Nos. 12 at 19-20, 19 at 13-14. Finally, plaintiff argues that the 11 RFC determination was without substantial evidence due to the ALJ’s unreasonable assessment 12 of the evidence provided by third-party witness Kelli Hoppe. ECF Nos. 12 at 19-20, 19 at 15-16. 13 For the reasons set forth herein, none of plaintiff’s arguments have merit. 14 A. Step Three Determination 15 Plaintiff first argues that the agency’s decision should be reversed because the ALJ’s 16 determination at step three lacked substantial evidence, insofar as the ALJ determined plaintiff 17 did not meet the paragraph C.2 criteria for listings 12.04, 12.06, and 12.15 of 20 C.F.R. Part 404, 18 Subpart P, Appendix 1. ECF Nos. 12 at 5-11, 19 at 1-9. The court concludes plaintiff has not 19 shown reversal is warranted. 20 At step three, the ALJ found that plaintiff did not have an impairment or combination of 21 impairments that meets or medically equals an impairment listed as severe in 20 CFR Part 404, 22 Subpart P, Appendix 1. AR 444-47. The ALJ observed that plaintiff’s claimed mental 23 impairments implicated listings 12.04 (depressive disorder), 12.06 (anxiety disorder), and 12.15 24 (PTSD) of Appendix 1. AR 444. In order for the impairment to be found under each of these 25 listings, the claimant must meet two of three criteria set forth in paragraphs A, B, and C of the 26 listing; specifically, he must meet the criteria set forth in paragraphs A and B, or A and C. see 20 27 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.04, 12.06, 12.15. The ALJ found that plaintiff did not meet 28 the criteria of paragraph B for any of these listings, AR 444-46; plaintiff does not challenge this 1 finding. See ECF No. 12 at 5-11. The ALJ also found that plaintiff did not meet the criteria 2 described paragraph C of any of these listings, AR

446-47, which requires a two-part showing: 3 C. Your mental disorder in this listing category is “serious and persistent;” that is, 4 you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both: 5

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly
6 structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and 7 8 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 9 12.00G2c). 10 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.15; see also id. 12.04, 12.06. Plaintiff argues here that 11 the record did not provide substantial evidence for the ALJ’s determination that part 2 of 12 paragraph C had not been shown for any of petitioner’s mental impairments or the combination 13 thereof. 14 The record demonstrates substantial evidence for the ALJ’s finding. Under the 15 regulations, the criterion contained in paragraph C.2 16 is satisfied when the evidence shows that, despite your diminished symptoms and signs, you have achieved only marginal adjustment. “Marginal adjustment” means 17 that your adaptation to the requirements of daily life is fragile; that is, you have minimal capacity to adapt to changes in your environment or to demands that are 18 not already part of your daily life. We will consider that you have achieved only marginal adjustment when the evidence shows that changes or increased demands 19 have led to exacerbation of your symptoms and signs and to deterioration in your functioning; for example, you have become unable to function outside of your 20 home or a more restrictive setting, without substantial psychosocial supports (see 12.00D). Such deterioration may have necessitated a significant change in 21 medication or other treatment. Similarly, because of the nature of your mental disorder, evidence may document episodes of deterioration that have required you 22 to be hospitalized or absent from work, making it difficult for you to sustain work activity over time. 23 24 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00.G.2.c. The ALJ found that, under this criterion, 25 plaintiff’s functioning reflected greater than “marginal adjustment” based on a multiplicity of 26 items of evidence in the record. Specifically, the ALJ first observed that plaintiff managed the 27 changes and unpredictabilities intrinsic to Alcoholics Anonymous meeting attendance, long- 28 1 distance travel, and occasional changes to his insurance provider, as well as expressed interest in 2 pursuing new activities, including joining a gym. AR 446-47. The ALJ’s description of the 3 record in this regard was accurate. See AR 49-50 (plaintiff testifies about annual trips to visit his 4 mother), 303-04 (treatment records memorializing plaintiff’s plans to manage his insurance 5 coverage), 360 (treatment records memorializing change in plaintiff’s insurance coverage), 362 6 (treatment records memorializing plaintiff’s report of having recently, in 2017, registered at a 7 gym), 474-75 (plaintiff’s hearing testimony describing Alcoholics Anonymous meeting 8 attendance and having joined a gym), 780 (plaintiff’s interrogatory response describing 9 Alcoholics Anonymous meeting attendance during the relevant period), 970 (treatment records 10 memorializing plaintiff’s stated plan to go to a gym the next day). 11 Plaintiff argues that it was unreasonable for the ALJ to rely on these occurrences as 12 evidence of

his greater-than-marginal adjustment, because this evidence instead supports the inference that plaintiff needs structure and routine in order to function successfully. See ECF No. 14 at 6-9. Plaintiff also argues that, as a matter of logic, the regulations cannot be read to preclude a finding of disability based on a claimant's participation in mental health treatment and programs like Alcoholics Anonymous meetings. ECF No. 12 at 7-9. Although the record may support the deductions plaintiff urges, the deductions of the ALJ are also reasonable and "[w]here the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). Here, the regulations required the ALJ to consider the claimant's ability to manage various life activities and, specifically, to adapt to changes and novel circumstances. 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00.G.2.c. As such, it was not only reasonable but necessary for the ALJ to examine the evidence for instances of such novelties and infer, from the evidence before him, how plaintiff appeared to have managed those experiences. See, e.g., *Scrum v. Comm'r*, No. CV-21-08240-PCT-DWL, 2022 WL 17688201, at *3 (D. Ariz. Dec. 15, 2022) (holding "it was rational for the ALJ to conclude that the highly restrictive criteria in listing 12.06(C) were not satisfied" based on evidence that claimant reported joining a gym, traveling for the weekend, engaging in personal care, handling finances, and preparing meals); *Craig N. v. 1 Saul*, No. 19-cv-05235-TSH, 2020 WL 4284845, at *22 (N.D. Cal. July 27, 2020) (evidence that claimant lived alone for years with only minor support, without any evidence of exacerbation of symptoms or deterioration in functioning due to changes, was "evidence of more than marginal adjustment"); *Joshua M. v. Comm'r*, No. 1:19-CV-05135-LRS, 2020 WL 13505053, at *9 (E.D. 5 Wash. Mar. 17, 2020) (claimant's "ability to remain independent in his daily functioning and his pursuit of mental health treatment, which included medication and counseling, with reports of improvement" supported ALJ's conclusion that Paragraph C2 was not met); *Smith v. Comm'r*,

8 No. 1:21-cv-00481-CDB (SS), 2024 WL 201052, at *6 (E.D. Cal. Jan. 18, 2024) (upholding 9 ALJ's finding that the criterion of paragraph C.2 was not met where claimant participated in 10 behavioral therapy, attended to his personal hygiene, and prepared simple meals) (rev'd on other 11 grounds); *Nicholle M. v. O'Malley*, No. 23-cv-05092-SK, 2024 WL 3550424, at *8 (N.D. Cal. 12 Mar. 6, 2024) (holding that evidence of claimant's travel "demonstrate[d] that [she] was able to 13 adapt to changes" within the meaning of paragraph C.2). Moreover, in order for the ALJ to find 14 the paragraph C.2 criterion to have been satisfied, he would have had to have found not only that 15 plaintiff struggled to adapt to changes, but more specifically that there was evidence that 16 confrontation with novel circumstances caused an "exacerbation of [plaintiff's] symptoms and 17 signs and . . . deterioration in [his] functioning." 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 18 12.00.G.2.c. Plaintiff points to no evidence on the record that impugns the ALJ's finding that the 19 record did not indicate such deterioration or exacerbation of plaintiff's symptoms and signs of 20 impairment when confronted with novel or unpredictable circumstances, see generally ECF No.

21 12 at 5-9, and the court's own review of the record reveals no such evidence either. 22 In addition to evidence of plaintiff's Alcoholics Anonymous meeting attendance, travel, 23 management of insurance coverage changes, and plans for future new circumstances, such as 24 joining a gym, the ALJ also considered that contemporaneous treatment notes indicated that 25 plaintiff was able to adapt to changes in his daily life. AR 447 (citing AR 1011-1186). Although 26 plaintiff argues broadly that the treatment records do not support such an inference, see ECF No. 27 12 at 9, the cited portion of plaintiff's medical records memorialize changes in treatment 28 modalities and medication regimens without indication that those events exacerbated plaintiff's 1 symptoms and signs of depressive disorder, anxiety disorder, or PTSD. See, e.g., AR 1013, 1016- 2 18, 1031, 1034, 1043; see generally AR 1011-1186. It was, therefore, reasonable for the ALJ to 3 rely on these records as indication that plaintiff exhibited greater-than-marginal adjustment, i.e., 4 did not meet the C.2 criterion. 5 Finally, the ALJ addressed in his C.2 analysis the opinions of Dr. Michael Smith and 6 clinician Brad Gilbert, both of which indicated their opinions that criterion C.2 was satisfied in 7 plaintiff's case. AR 447. The ALJ found neither opinion persuasive. Ibid. The ALJ gave no 8 weight to Dr. Smith's conclusion on this criterion, because his opinion was supported by little 9 narrative, was unsupported by his own treatment notes, and was inconsistent with the other 10 evidence of plaintiff's functioning, described above. It is apt for an ALJ to consider such features 11 when evaluating and weighing the opinions of medical experts, even at the stage three analysis. 12 See generally 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00.C.1 (explaining that the agency 13 evaluates medical opinions using the standards set forth in §§ 404.1520c, 404.1527, 416.920c, 14 and 416.927); see, e.g., *Smith v. Comm'r of Soc. Sec.*, No. 121CV00481CDBSS, 2024 WL 15 201052, at *6 (E.D. Cal. Jan. 18, 2024). The record supports the ALJ's assessment of Dr. Smith's 16 opinion as supported by little narrative to justify its conclusion, see AR 319-20, which plaintiff 17 concedes. See ECF No. 12 at 10. The record also supports the ALJ's observations that Dr. 18 Smith's opinions that plaintiff "experienced repeated episodes of deterioration or decompensation 19 in situations which cause him . . . to withdraw from the situation or to experience an exacerbation 20 of signs or symptoms" and that "even a minimal increase in mental demands or change [would] 21 be predicted to cause [plaintiff] to decompensate," AR 320, were not substantiated by any of the 22 contemporaneous notes contained in his treatment records of plaintiff. See AR 356-64. Finally, 23 the ALJ was reasonable in considering the extent to which Dr. Smith's opinions were 24 contradicted by other evidence in the record when determining what, if any, weight to give his 25 opinions. See generally 20 C.F.R. § 404.1520c(c)(2) (defining external consistency and 26 identifying it as one of the most important considerations in evaluating a medical opinion). 27 The ALJ's rejection of Mr. Gilbert's opinion that criterion C.2 was satisfied was also 28 reasonable given the totality of the record before the agency. Mr. Gilbert opined that plaintiff 1 found "it difficult to adapt to any changes in his environment or in his life" and that "change is 2 overwhelming for" plaintiff. AR 1188. In support of this opinion, Mr. Gilbert briefly described 3 that plaintiff had lived in the same location for 33

years; relied on addiction mentors, friends, and 4 therapy sessions for structure; had not changed cars despite his becoming non-functional; and 5 struggled in relationships due to anxiety and paranoia. AR 1188. The ALJ was reasonable, 6 however, in observing that this supportive narrative lacked much detail, nor any supporting 7 treatment records, from which its accuracy could be discerned. See *ibid.* The ALJ also 8 reasonably discounted Mr. Gilbert's opinion for appearing inconsistent with other evidence in the 9 record, including plaintiff's self-reporting of his functioning. In total, the record amply supports 10 the reasonability of the ALJ's discounting of Mr. Gilbert's opinion. See generally 20 C.F.R. § 11 404.1520c(b)(2). 12 Accordingly, plaintiff has not shown that the ALJ's step three finding lacked substantial 13 evidence to support it. 14 B. Challenges to RFC Determination 15 The remainder of plaintiff's challenges are to the ALJ's determination on remand of 16 plaintiff's RFC. ECF No. 12 at 11-20. Plaintiff argues that the ALJ was unreasonable in finding 17 certain medical opinions persuasive and others unpersuasive, and in the degree to which he 18 credited evidence provided by plaintiff and a third-party witness. *Ibid.* As a threshold matter, 19 plaintiff's challenges to the agency's RFC determination must fail because he makes no argument 20 as to how any of the asserted errors harmed him, i.e., in what way the RFC determination would 21 have differed, and been more favorable to a disability finding, had the ALJ not committed the 22 errors that plaintiff argues. See *ibid.*; ECF No. 19 at 9-16. This absence is fatal to plaintiff's 23 argument that remand is warranted, as a plaintiff challenging a denial of disability benefits must 24 demonstrate prejudice for any error. See *Shinseki*, 556 U.S. at 409; *Molina v. Astrue*, 674 F.3d 25 1104, 1115 (9th Cir. 2012); see also *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692 26 n.2 (9th Cir. 2009) (plaintiff "does not detail what other physical limitations follow from the 27 evidence of his knee and should injuries, besides the limitations already listed in the RFC. We 28 reject any invitation to find that the ALJ failed to account for [plaintiff's] injuries in some 1 unspecified way."). 2 Additionally, for the reasons set forth below, plaintiff fails to show that the RFC 3 determination was lacking substantial evidence so as to merit reversal. See generally 42 U.S.C. § 4 405(g); *Biestek*, 587 U.S. at 99. On this alternative basis, plaintiff's motion must be denied and 5 defendant's granted. 6 1. ALJ's Evaluation of Medical Opinion Evidence 7 Plaintiff challenges the RFC as lacking substantial evidence because, per plaintiff, in 8 reaching conclusions about plaintiff's functioning the ALJ unreasonably relied on the opinions of 9 non-examining medical experts and unreasonably found unpersuasive the opinions of other 10 experts. ECF No. 12 at 11-18. Plaintiff's argument is meritless. 11 a. Dr. Tawnya Brode and Dr. Normal Zukowsky 12 As part of the ALJ's RFC analysis, he found persuasive Dr. Brode's opinion that plaintiff 13 "was able to maintain appropriate behavior in a context of limited social demands and public 14 contact," and Dr. Zukowsky's opinion that plaintiff "could perform unskilled or entry-level work, 15 interact with coworkers and the public in brief encounters . . . while individual or isolative duties 16 were recommended without group, collaborative, or cooperative tasks." AR 452. The ALJ found 17 that both opinions were well-supported by respective reviews of the evidence and narratives. 18 *Ibid.*

(citing AR 62-74, 76-90). He also found that both opinions were consistent with extrinsic 19 evidence: the observations of Dr. Giannuli, plaintiff's presentation during the physical consultant 20 examination, plaintiff's self-reporting of his functioning, and his records demonstrating 21 conservative treatment for plaintiff's psychiatric impairments. AR 452. The ALJ observed that 22 Dr. Zukowsky's report contained an internal contradiction, in that it endorsed both that plaintiff 23 could interact with coworkers and the public in brief encounters and that plaintiff's contact with 24 the public was precluded and other contacts should be minimized. Ibid. Resolving this 25 discrepancy, the ALJ found the less restrictive opinion of Dr. Zukowsky to be more persuasive, as 26 it was both supported and consistent, for the reasons set forth above. Ibid. 27 Plaintiff challenges the ALJ's analysis on several bases, none of which have merit. First, 28 plaintiff repeatedly emphasizes that Drs. Brode and Zukowsky had not personally examined 1 plaintiff, suggesting that on this basis the ALJ was unreasonable for finding their opinions more 2 persuasive than those of sources who had examined plaintiff. The ALJ's approach in this regard 3 was proper under governing regulations. Under the revised regulations,⁷ in making the RFC 4 determination, the ALJ cannot "defer or give any specific evidentiary weight, including 5 controlling weight, to any medical opinion(s) or prior administrative medical finding(s). . . ." 20 6 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead, ALJs must consider every medical opinion or prior 7 administrative medical finding in the record and evaluate the persuasiveness of each one using 8 specified factors. Id. §§ 404.1520c(a), 416.920c(a). Of these factors, the two most important, 9 which the ALJ must discuss expressly in his opinion, are "supportability" and "consistency." 20 10 C.F.R. §§ 404.1520c(a), 404.1520c(b)(2), 416.920c(a), 416.920c(b)(2). "Supportability means 11 the extent to which a medical source supports the medical opinion by explaining the 'relevant . . . 12 objective medical evidence.'" *Woods v. Kijakazi*, 32 F.4th 785, 791-92 (9th Cir. 2022) (quoting 13 20 C.F.R. § 404.1520c(c)(1)); see also 20 C.F.R. § 416.920c(c)(1). An opinion is more 14 "supportable," and thus more persuasive, when the source provides more relevant "objective 15 medical evidence and supporting explanations" for their opinion. 20 C.F.R. §§ 404.1520c(c)(1), 16 416.920c(c)(1). "Consistency means the extent to which a medical opinion is 'consistent . . . with 17 the evidence from other medical sources and nonmedical sources in the claim.'" *Woods*, 32 18 F.4th 785 at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)); see also 20 C.F.R. § 416.920c(c)(2). 19 The revised regulations still permit the ALJ to consider the source's relationship with the 20 claimant and whether they have treated or examined them personally. *Woods*, 32 F.4th 785 at 21 792. Specifically, the regulations permit the ALJ to consider the length and purpose of the 22 treatment relationship, the frequency of examinations, the kinds and extent of examinations that 23 the medical source has performed or ordered from specialists, and whether the medical source has 24 examined the claimant or merely reviewed the claimant's records. Ibid. (citing 20 C.F.R. § 25 404.1520c(c)(3)(i)-(v)). Typically, although the ALJ may consider these "relationship factors," 26 7 The regulations regarding the evaluation of medical opinion evidence were amended for 27 claims filed on or after March 27, 2017. See Revisions to Rules Regarding the Evaluation of

Medical Evidence, 82 Fed. Reg. 5844, 5867-68, 5878-79 (Jan. 18, 2017). Because plaintiff filed 28 his claim after that date, the new regulations apply. See 20 C.F.R. §§ 404.1520c, 416.920c. 1 his opinion need not contain specific findings as to any of them. Ibid. (citing 20 C.F.R. § 2 404.1520c(b)(2)). If, however, the ALJ finds that the supportability and consistency factors to be 3 essentially in equipoise for two or more medical opinions—i.e., that “two or more medical 4 opinions . . . about the same issue are . . . equally well-supported . . . and consistent with the 5 record . . . but are not exactly the same,” 20 C.F.R. § 404.1520c(b)(3)—the ALJ must articulate in 6 his decision how he considered “the other most persuasive factors” beyond supportability and 7 consistency. Id. These other factors include the relationship factors described above, id. § 8 404.1520c(c)(3), whether the medical source’s opinion concerns “medical issues related to his or 9 her area of specialty,” id. § 404.1520c(c)(4), and any “other factors that tend to support or 10 contradict [the] medical opinion,” id. § 404.1520c(c)(5); see Woods, 32 F.4th at 792. 11 In light of these regulations, there was no error in the ALJ’s overall analytical approach to 12 assessing the persuasiveness of Drs. Brode’s and Zukowsky’s opinions. Consistent with 13 governing regulations, the ALJ articulated that he found both opinions persuasive because they 14 were each supported and consistent. AR 452. Although he did not articulate any findings as to 15 the relevance of any of the relationship factors to his analysis, he was not required to. See 20 16 C.F.R. § 404.1520c(b); AR 452-54. Moreover, the fact that the ALJ did not apparently treat Drs. 17 Brode’s and Zukowsky’s opinions as intrinsically suspect because they did not examine plaintiff, 18 as plaintiff appears to suggest the ALJ should have done, was correct under the regulations. See 19 20 C.F.R. § 404.1520c(a); Woods, 32 F.4th at 791-92. 20 Also meritless is plaintiff’s argument that the opinions of Drs. Brode and Zukowsky were 21 not reliable because they were each premised on Drs. Brode’s and Zukowsky’s only minimal 22 knowledge of plaintiff’s functioning. Plaintiff argues that both opinions were premised solely on 23 clinician Paoli’s two-page report and single page of notes, generated in 2017; and a 2017 report of 24 Dr. Giannuli. ECF No. 12 at 12. The record does not support this. Dr. Brode reported that she 25 considered Ms. Paoli’s and Dr. Giannuli’s 2017 reports, as well as plaintiff’s medical records 26 from 2016 and 2017, including records of his treatment for and management of the relevant 27 psychiatric conditions. AR 63-70. Dr. Zukowsky’s opinion was reportedly premised on review 28 of the same materials, as well as additional materials from Ms. Paoli and the Women’s Center for 1 Youth and Family, which had been submitted in support of reconsideration. AR 77-90. 2 Plaintiff also argues that Drs. Brode’s and Zukowsky’s opinions were necessarily less 3 reliable than those of other medical experts who rendered opinions after 2017, based on plaintiff’s 4 treatment records spanning 2017 to 2024. ECF No. 12 at 12-13. This argument also fails to 5 persuade. The narrow and specific question before the ALJ was whether plaintiff had shown he 6 was disabled between May 12, 2012, the date of claimed onset of disability, and December 31, 7 2017, the date he was last insured. See 42 U.S.C. § 423(c); 20 C.F.R. § 404.1520; AR 168, 443- 8 44. Although the regulations permit the agency to consider medical opinions generated after the 9 claimant’s date last insured, see *Smith v. Bowen*,

849 F.2d 1222, 1225 (9th Cir. 1988), those 10 opinions are persuasive only insofar as they illuminate plaintiff's functioning before the date last insured. See *id.* at 1225-26; see, e.g., *Dale v. Colvin*, 823 F.3d 941, 944 (9th Cir. 2016) (noting 12 that medical opinion given two years after date last insured was "only marginally relevant" to the 13 disability determination); *Grace E.F. v. Saul*, No. 2:18-cv-09905-AFM, 2019 WL 6135029, at *6 14 (C.D. Cal. Nov. 19, 2019) (finding records created more than over one year after date last insured 15 were irrelevant to plaintiff's DIB claim when nothing in them purported to concern her 16 limitations on or before date last insured); *Vaile v. Berryhill*, No. 5:16-cv-00393-GJS, 2017 WL 17 2785331, at *3 (C.D. Cal. June 27, 2017) (finding medical records and opinion from after period 18 of disability relevant because they related to treatment for conditions that existed during period of 19 disability); see generally 42 U.S.C. § 423(c); 20 C.F.R. § 404.1520. Given the temporal period at 20 issue before the ALJ, it was reasonable for him to pay particular attention to the opinions 21 rendered, and evidence of plaintiff's functioning, during that period or shortly thereafter. Cf. 22 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (when "interpreting the 23 evidence and developing the record, the ALJ does not need to 'discuss every piece of evidence'"). 24 Moreover, the ALJ's reasons for crediting the opinions of Drs. Brode and Zukowsky were 25 supported by the record. Consistent with the ALJ's opinion, both Drs. Brode's and Zukowsky's 26 opinions were supported with relevant, objective medical evidence. AR 67-72, 77-88. The 27 record also corroborates the ALJ's finding that Drs. Brode's and Zukowsky's opinions were 28 consistent with Dr. Giannuli's 2017 clinical observations of plaintiff's functioning, see AR 305- 1 18, and with plaintiff's treatment history. See AR 307, 323-53, 360, 404, 812-1010, 1012-1185. 2 Despite plaintiff's characterization of his psychiatric treatment history as intensive, see ECF No. 3 12 at 13-14, the record supports the ALJ's perception that plaintiff had experienced only 4 "conservative treatment for . . . [his] psychiatric impairments," given that plaintiff's treatment in 5 the relevant period primarily consisted of outpatient therapy sessions and some management with 6 medication. AR 452; see, e.g., AR 307 (memorializing plaintiff's report to Dr. Giannuli in 2017 7 that he had not received treatment or medication for PTSD in 2.5 years), AR 323-53 (treatment 8 records indicating that from January through April, 2018, plaintiff was referred to individual 9 outpatient therapy and weekly aftercare groups for management of his major depression with 10 recurrent episodes of anxious distress), AR 360 (October 2017 treatment record memorializing 11 that plaintiff would begin dialectical behavioral therapy group for anger management in January 12 2018), AR 404 (May 2017 treatment record memorializing plaintiff's prescription for Paxil for 13 anxiety, depression, and PTSD), AR 818-19 (2018 treatment records indicating plaintiff referred 14 for group therapy and individual therapy for major depression), AR 827 (May 2018 treatment 15 record stating plaintiff engaged in AA once per week, group therapy once per week, and 16 individual therapy sessions), AR 1013-14 (2019 treatment records memorializing plaintiffs report 17 that he was not using psychotropic medication and that he was participating in weekly therapy); 18 see *McCaffrey v. Comm'r*, No. 2:16-cv-03055-KJN, 2018 WL 534037, at *10 (E.D. Cal Jan.

23, 19 2018) (characterizing counseling and psychiatric medications as “relatively conservative 20 treatment” for depression). In sum, in light of the entirety of the record before the agency, there 21 was substantial evidence for the ALJ finding persuasive Drs. Brode’s and Zukowsky’s opinions 22 about the plaintiff’s capacities when interacting with others resultant from his psychiatric 23 impairments. See generally Thomas, 278 F.3d at 954. 24 b. Dr. M. Giannuli 25 Plaintiff next takes issue with the ALJ’s discussion of the medical opinion of Dr. M. 26 Giannuli. ECF No. 12 at 15-16. In a July 15, 2017 report, Dr. Giannuli opined that plaintiff, 27 was, inter alia, “mildly impaired” in his ability to work with coworkers and the public, to perform 28 work activities consistently without special or additional instructions, to maintain regular 1 attendance in the workplace, to complete a normal workweek without interruptions from mental 2 health symptoms, and to deal with the usual stresses of a workplace. AR 310-11. The ALJ 3 credited Dr. Giannuli’s findings that plaintiff was impaired, but was “not persuaded by the 4 opinion of Dr. Giannuli that the claimant only had mild limitations.” AR 311. The ALJ found 5 the opinion supported by Dr. Giannuli’s own clinical observations of plaintiff, but inconsistent 6 with plaintiff’s own reported limitations and his history of psychiatric treatment. Ibid. 7 Plaintiff appears to claim error in the fact that the ALJ found Dr. Giannuli’s opinion only 8 partially persuasive. ECF No. 12 at 15. There was nothing erroneous in this approach. “It is not 9 necessary to agree with everything an expert witness says in order to hold that his testimony 10 contains ‘substantial evidence.’” Russell v. Bowen, 856 F.2d 81, 83 (9th Cir. 1988) (citing 11 Vincent v. Heckler, 739 F.2d 1393 (9th Cir. 1984)). Here, the ALJ credited Dr. Giannuli’s 12 opinion that plaintiff was impaired in specific ways, based on the objective medical information 13 gleaned in Dr. Giannuli’s examination of plaintiff. AR 453 (citing AR 305-11). The ALJ also 14 considered whether the extent of plaintiff’s impairment was as Dr. Giannuli identified, 15 concluding that other evidence—viz., plaintiff’s reports of his own functioning, AR 200-08, 776- 16 82, and treatment history, AR 810-1185—belied Dr. Giannuli’s conclusion that plaintiff’s 17 impairments were only mild. This approach was not error, but rather reflects the ALJ undertaking 18 the very analysis the regulations require of him. 20 C.F.R. §§ 404.1520(e), 404.1520(c)(a), 19 404.1527(d)(2), 404.1545(a), 404.1546(c); 416.945(a); see Tommasetti v. Astrue, 533 F.3d 1035, 20 1041-42 (9th Cir. 2008) (“[T]he ALJ is the final arbiter with respect to resolving ambiguities in 21 the medical evidence.”); Lingenfelter v. Astrue, 504 F.3d 1028, 1042 (9th Cir. 2007) (“When 22 evaluating the medical opinions of treating and examining physicians, the ALJ has discretion to 23 weigh the value of each of the various reports, to resolve conflicts in the reports, and to determine 24 which reports to credit and which to reject.”); Benton v. Barnhart, 331 F.3d 1030, 1040 (9th Cir. 25 2003) (where “the record contains conflicting medical evidence, the ALJ is charged with 26 determining credibility and resolving the conflict”); Morgan v. Comm’r of Soc. Sec. Admin., 169 27 F.3d 595, 603 (9th Cir. 1999) (holding that ALJ was “responsible for resolving conflicts” and 28 “internal inconsistencies” within doctor’s reports); see generally Vertigan, 260 F.3d at 1049 (“It 1 is clear that it is the responsibility of the ALJ, not the claimant’s physician, to determine residual 2 functional capacity.”). It therefore

was not error for the ALJ to rely on those aspects of Dr. 3 Giannuli's report the ALJ found persuasive when he evaluated the consistency factor of other 4 medical opinions. See ECF No. 12 at 15. 5 Moreover, to the extent plaintiff argues that the ALJ's partial rejection of Dr. Giannuli's 6 report was error, plaintiff's failure to make an argument addressing prejudice, as discussed above, 7 is especially fatal to this subclaim in particular, given that the ALJ largely credited Dr. Giannuli's 8 clinical opinion, only deviating from Dr. Giannuli by finding plaintiff more limited in his 9 functioning than Dr. Giannuli had found. AR 453. As such, it is unclear how the ALJ's error in 10 assessing and weighing Dr. Giannuli's opinion, if any, was not harmless to the RFC 11 determination nor, more generally, to the ALJ's decision that plaintiff was not disabled. See 12 *Gonzalez v. Kijakazi*, No. 1:21-CV-01676-SKO, 2023 WL 6164086, at *7 (E.D. Cal. Sept. 21, 13 2023) ("plaintiff can hardly fault the ALJ for giving him the benefit of the doubt and assessing an 14 RFC that is more favorable to plaintiff than most of the medical opinions in the record"); *Mills v. 15 Comm'r of Soc. Sec.*, No. 2:13-CV-0899-KJN, 2014 WL 4195012, at *4 n.8 (E.D. Cal. Aug. 22, 16 2014) (same). Plaintiff makes no argument to explain how, had the ALJ hewn strictly to only 17 those limitations identified by Dr. Giannuli, the ALJ's determinations would have been different 18 and more favorable to plaintiff. See *Shinseki*, 556 U.S. at 409; *Stout*, 454 F.3d at 1055-56; see 19 generally *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). 20 Plaintiff appears to argue that, even if the ALJ's analysis of Dr. Giannuli's opinion was 21 not error, the ALJ erred insofar as he found certain other medical sources' opinions not 22 persuasive because they were inconsistent with Dr. Giannuli's opinion, or persuasive because 23 they were consistent with Dr. Giannuli's opinion. See ECF No. 12 at 15, 17, 18. Plaintiff 24 suggests that this would reflect an untenable analytical approach, given that the ALJ had also 25 found not persuasive Dr. Giannuli's clinical opinions that plaintiff was only mildly impaired in 26 certain realms. *Ibid.* This argument has no purchase. In analyzing the consistency factors for the 27 medical opinions of Drs. Brode and Zukowsky, the ALJ considered the opinions' consistency 28 relative to Dr. Giannuli's clinical observations, not opinions. See AR 452. In analyzing the 1 consistency factors for the medical opinions of Ms. Paoli, Dr. Smith, and Ms. Anglim, the ALJ 2 considered their consistency relative to Dr. Giannuli's observations and opinions, AR 453-54, but 3 this presents no untenable logical inconsistency. The ALJ found credible Dr. Giannuli's opinion 4 that plaintiff had a mentally medically determinable impairment, but found not credible his 5 opinion that the impairment was only mild; in contrast, Ms. Paoli, Dr. Smith, and Ms. Anglim all 6 found much greater levels of impairment, which the ALJ also found unpersuasive under both the 7 supportability and consistency factors, considering, for the latter, numerous of items of evidence 8 in the record in addition to Dr. Giannuli's opinions. See AR 453-54. Based on all of these items 9 of evidence, as well as the supportability factors for each opinion, he ultimately concluded that 10 plaintiff's limitations appeared to be more incapacitating than Dr. Giannuli's "mild" descriptor, 11 but less incapacitating than the levels of impairment Ms. Paoli, Dr. Smith, and Ms. Anglim had 12 indicated. There was no error in this nuanced approach to reconciling the disparate medical 13

opinion evidence before him, see generally *Tommasetti*, 533 F.3d at 1041-42; *Lingenfelter*, 504 F.3d at 1042; *Benton*, 331 F.3d at 1040, and his conclusions about the persuasiveness of the 15 medical opinions before him and, more generally, his RFC determination are supported by the 16 totality of the evidence before the agency on this issue. See *Hill*, 698 F.3d at 1159. 17 For all of these reasons, therefore, plaintiff fails to show that the ALJ's decision should be 18 vacated due to errors in assessing Dr. Giannuli's medical opinion. 19 c. Linda Paoli 20 Plaintiff next claims error in the ALJ's assessment of and findings relative to the opinion 21 of Linda Paoli, LCSW. ECF No. 12 at 15-16. Ms. Paoli authored a letter, dated June 14, 2017, in 22 which she stated that she had treated plaintiff intermittently from September 2003 to August 23 2013, during which time he attended group therapy sessions and individual therapy sessions, and 24 she described briefly her knowledge of plaintiff's psychiatric functioning during that time. AR 25 301-02. Her letter concluded with the following clinical opinion: "I think that Mark would have 26 great difficulty getting and keeping a job. His paranoia would lead to anger outbursts with co- 27 workers and/or customers. His difficulty with authority figures would similarly impede his 28 keeping a job." AR 302. 1 In its decision reversing the district court's affirmance of the agency's denial of disability 2 benefits, the Court of Appeals ordered the matter be remanded so that the ALJ could determine 3 whether Ms. Paoli's letter constituted a medical opinion and, if so, analyze it pursuant to the 4 factors set forth in 20 C.F.R. § 404.1520c(c)(1)-(5). AR 495-98. On remand, the ALJ concluded 5 that Ms. Paoli's letter constituted a medical opinion. AR 451-52. He then concluded that Ms. 6 Paoli's opinion about the extent and nature of plaintiff's impairments was not credible, finding: 7 Such opinion is vague with respect to the claimant's maximum functional abilities (Ex. 1F). Further, such opinion is supported by minimal treatment records (Ex. 8 1F/4), while the undersigned notes that within the narrative Ms. Paoli indicated that much of her treatment was prior to the alleged onset date, while an intern 9 evaluated the claimant in June 2012 without associated treatment notes (Ex. 1F/2; Medical Evidence). Ms. Paoli's opinion is also not wholly supported by the 10 narrative, which indicates that the claimant appeared to do better with medication treatment (Ex. 1F/2). Ms. Paoli's opinion is also inconsistent with the examination 11 and opinion provided by Dr. Giannuli (Ex. 2F). Further, Ms. Paoli's opinion is inconsistent with the claimant's cooperative presentation to Dr. Schwartz (Ex. 3F). 12 Ms. Paoli's opinion is inconsistent with the claimant's treatment in late 2017 and early 2018, which show improvements in his symptoms (Exs. 5F/4; 6F/2-3; 13 13F/19). Additionally, Ms. Paoli's opinion is inconsistent with the claimant's own reporting of frequent grocery shopping and attending group meetings (Exs. 3E/7- 14 8), as well as travel to Florida (Ex. 6F/5). 15 AR 453. 16 The ALJ's analysis of and his reasons for rejecting Ms. Paoli's clinical opinion were 17 reasonable and had substantial evidence supporting them. Consistent with the regulations and the 18 Court of Appeals' remand order, the ALJ considered the supportability and consistency of her 19 opinion in evaluating it. See *Woods*, 32 F.4th at 791-92; 20 C.F.R. § 404.1520c(c)(1). The record 20 supports the ALJ's finding that Ms. Paoli's opinion was unsupported in its description of plaintiff 21 as extremely impaired in

his ability to interact with others successfully, as it failed to account for 22 Ms. Paoli's own recollection that "[a]nti-depressants [had] helped" plaintiff in his functioning, as 23 she had attributed his "angry outbursts," suicidality, lack of energy and motivation, and 24 addictions to his depressive disorder. AR 302. It was also appropriate for the ALJ to observe that 25 Ms. Paoli's opinion was supported by extremely minimal contemporaneous treatment records, 26 including none by Ms. Paoli from the period of 2003 to 2013, which was the period she had 27 identified as encompassing her treatment of plaintiff. See AR 301-04; see, e.g., *Fidel R.P. v. 28 1 O'Malley*, 754 F. Supp. 3d 986, 992 (N.D. Cal. 2024) (analyzing supportability factor in terms of, 2 inter alia, whether it was supported by the opinion writer's own treatment records or notes). It 3 was also appropriate under the regulations for the ALJ to observe that, to the extent Ms. Paoli 4 based her clinical opinion on plaintiff's functioning while participating in therapy with another 5 clinician, there were no notes or records from that clinician that tended to support Ms. Paoli's 6 descriptions and conclusions about plaintiff's functioning. See AR 301-02. Because the 7 regulations instruct that "[t]he more relevant the objective medical evidence and supporting 8 explanations presented by a medical source are to support his or her medical opinion(s) . . . , the 9 more persuasive the medical opinions . . . will be," 20 C.F.R. § 404.1520(c)(1), the ALJ 10 committed no legal error in concluding that, based on the record before the agency, there was 11 little objective medical evidence in support of Ms. Paoli's clinical opinion, thus rendering it 12 minimally supported within the meaning of the regulations. 13 The ALJ's conclusion that Ms. Paoli's opinion was inconsistent with other evidence was 14 also reasonable and supported by substantial evidence in the record. See *Woods*, 32 F.4th at 791- 15 92; 20 C.F.R. § 404.1520(c)(2). The ALJ found that Ms. Paoli's conclusion that plaintiff would 16 have great difficulty maintaining employment due to his unrestrained angry outbursts resultant 17 from paranoia was inconsistent with the clinical observations and opinion of Dr. Giannuli in 18 2017, those of Dr. Schwartz in 2017, and plaintiff's treatment records from 2017 and early 2018 19 that showed an improvement in his symptoms. AR 453. The record supports the ALJ's 20 interpretation. In contradiction of Ms. Paoli's conclusions, Dr. Giannuli found plaintiff to have 21 been "polite and cooperative" during his clinical examination of plaintiff, consistent with 22 plaintiff's own reports that he experienced less internal agitation and conflictual interactions with 23 others since taking Cymbalta, a SNRI. AR 309. As the ALJ observed, Ms. Paoli's conclusion 24 was also contradicted by Dr. Schwartz's report that, in his clinical examination of plaintiff in 25 2017, he found plaintiff to be "pleasant and cooperative," AR 315, and by plaintiff's treatment 26 records indicating that, during the relevant period, plaintiff showed improvements in his internal 27 emotional regulation, coping skills, and management of his anger, while taking his prescribed 28 Cymbalta. AR 325; see also AR 356-57, 828-29. It was reasonable for the ALJ to consider Ms. 1 Paoli's opinions less persuasive to the extent they were contradicted by the reported observations 2 of other clinicians. See generally 20 C.F.R. § 404.1520(c)(2). It was also reasonable for the 3 ALJ to discount Ms. Paoli's opinion given that it appeared to fail to account for plaintiff's 4 reported and observed history of successful

management of his emotional lability with 5 medication. See *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) 6 (“Impairments that can be controlled effectively with medication are not disabling for the purpose 7 of determining eligibility for SSI benefits.”). 8 Finally, the ALJ discounted Ms. Paoli’s opinion because it was inconsistent with 9 plaintiff’s reports of successful management of the tasks of regular grocery shopping and 10 Alcoholics Anonymous meeting attendance, as well as travel. AR 453 (citing AR 203, 359). It 11 was reasonable for the ALJ to discount a medical opinion because it is contradicted by the 12 claimant’s reports of his own functioning. See, e.g., *Mitchell v. Kijakazi*, No. 21-35647, 2022 13 WL 17547806, at *1 (9th Cir. Dec. 9, 2022) (holding that substantial evidence supported the 14 ALJ’s decisions where the ALJ evaluated medical opinions’ “consistency and supportability 15 against other evidence in the record, including. . . [the plaintiff’s] contrasting reported activities”); 16 *Thompson v. Kijakazi*, No. 1:22-CV-00364-BAM, 2023 WL 3224442, at *10 (E.D. Cal. May 3, 17 2023) (holding ALJ reasonably discounted medical opinions of the limits of a claimant’s 18 functioning, when those limits were inconsistent with evidence of the claimant “attending and/or 19 chairing multiple AA meetings per week, spending time with friends, doing volunteer work, 20 researching and expressing interest in a position as Mental Health Ambassador for Tuolumne 21 County, and creating and selling artwork”); *Leonard v. Comm’r of Soc. Sec.*, No. 1:21-cv-00627-22 EPG, 2022 WL 4123990, at *4 (E.D. Cal. Sept. 9, 2022) (“when considered in conjunction with 23 the rest of the ALJ’s reasoning, the ALJ’s reliance on Plaintiff’s daily activities—caring for her 24 cat, preparing simple meals, cleaning, and sometimes administering her father’s insulin, etc.—is a 25 reasonable basis to discount the severe limitations assessed [in a medical opinion]”). Here, there 26 was substantial evidence for the ALJ’s determination that Ms. Paoli’s opinion was inconsistent 27 with plaintiff’s reports about his functioning, including specific activities he had reported to have 28 undertaken successfully, and to conclude that on this basis the consistency factor weighed against 1 Ms. Paoli’s opinion. 2 Plaintiff argues that the ALJ’s discounting of Ms. Paoli’s opinion—that plaintiff “would 3 have great difficulty getting and keeping a job” due to inevitable “anger outbursts with co- 4 workers and/or customers” and “difficulty with authority figures”—was unreasonable because her 5 opinion had accounted for the evidence that the ALJ found contradictory. ECF No. 12 at 15-16. 6 In other words, plaintiff argues that the ALJ should have understood Ms. Paoli’s opinion to have 7 encompassed the successes in emotional management that Drs. Giannuli and Schwartz reported 8 having observed and plaintiff reported having experienced, and that her opinion was reliable 9 because it accounted for these subtleties. *Ibid.* Ms. Paoli’s opinion, however, does not make this 10 assertion, and only obliquely suggests it through imprecise, vague discussions of plaintiff’s 11 functioning during the time she treated him. See AR 301-02 (plaintiff’s “interpersonal skills were 12 frequently getting him into trouble. These ‘skills’ were a result of depression and Post Traumatic 13 Stress Disorder. The union came to his defense and he did not lose his job but sometimes was 14 suspended”); *ibid.* (plaintiff’s “gains were very slow and he often had setbacks”). Although it is 15 possible that Ms. Paoli’s clinical

opinion intended to account for the successes the ALJ identified 16 plaintiff to have demonstrated in his emotional and behavioral management, the ALJ was 17 reasonable in failing to adopt that interpretation given the actual text of Ms. Paoli's opinion and in 18 concluding, instead, that Ms. Paoli's perception of plaintiff as highly unable to function with the 19 interpersonal demands of a work environment was belied by other medical and non-medical 20 evidence. See Ford, 950 F.3d at 1154 (if the evidence "is susceptible to more than one rational 21 interpretation, it is the ALJ's conclusion that must be upheld"). The ALJ's reasons for finding 22 Ms. Paoli's opinions inconsistent with other evidence and therefore not persuasive were 23 supported by substantial evidence in the record before the agency, and thus deserve deference. 24 See generally 20 C.F.R. § 404.1520c(c)(2)). 25 d. Dr. Michael Smith 26 Plaintiff next argues error in the ALJ's finding that the clinical opinion of Dr. Michael 27 Smith was not persuasive as it related to plaintiff's mental health functioning. ECF No. 12 at 16- 28 17. In a form completed April 4, 2018, Dr. Smith opined, inter alia, that plaintiff's depression 1 and PTSD would interfere with his ability to retain employment if employed and would likely 2 cause him to miss work more than four days per month. AR 319-20. The ALJ found these 3 opinions not persuasive because under the supportability and consistency factors. AR 453. That 4 determination is supported by substantial evidence in the record before the agency. 5 There was substantial evidence for the ALJ's finding that Dr. Smith's opinions were 6 minimally supported. Dr. Smith's opinion was supported by only a brief narrative, which 7 consisted of no "objective medical evidence and supporting explanations," 20 C.F.R. § 8 404.1520c(c)(1), to justify the limitations he identified. See AR 319-21. The ALJ also accurately 9 described that Dr. Smith's treatment notes failed to support the limitations contained in his 10 opinion, as his notes memorialized plaintiff's reports of good overall functioning, AR 356-57, 11 360; his recent successful trip to visit his mother, AR 359; and that his prescribed Cymbalta was 12 working effectively in helping him self-regulate, AR 361-63, and failed to contain any evidence 13 indicating that plaintiff could not retain employment if employed or would likely miss four or 14 more days of work per month due to his psychiatric impairments. See AR 356-63. For these 15 reasons, substantial evidence supports the ALJ's determination that Dr. Smith's opinions were 16 minimally supported within the meaning of 20 C.F.R. § 404.1520c(c)(1). 17 There was also substantial evidence for the ALJ's finding that Dr. Smith's opinions about 18 the limitations engendered by plaintiff's psychiatric impairments were inconsistent with other 19 evidence in the record and, thus, not persuasive for this reason. See AR 453-54. The ALJ 20 observed that the restrictions contained in Dr. Smith's opinion were inconsistent with the 21 observations and opinions of Dr. Giannuli, with plaintiff's treatment records showing 22 improvement in his symptoms, and with plaintiff's own reports of his functional abilities. Ibid. 23 The ALJ's depiction of the record on these points was accurate, see AR 203, 307, 310-11, 323-53, 24 359, 404, 812-1010, 1012-1185, AR 203, and, as described above, these are reasonable bases for 25 an ALJ finding inconsistency in a particular medical opinion. See Woods, 32 F.4th at 794; see, 26 e.g., Mitchell, No. 21-35647, 2022 WL 17547806, at

*1; Thompson, No. 1:22-CV-00364-BAM, 27 2023 WL 3224442, at *10; Leonard, No. 1:21-cv-00627-EPG, 2022 WL 4123990, at *4. 28 Plaintiff has not shown that the ALJ's finding on the persuasiveness of Dr. Smith's opinions of 1 plaintiff's psychiatric limitations lacked substantial evidence. See Thomas, 278 F.3d at 954. 2 e. Amy Anglim and Elizabeth Mattreoni 3 Plaintiff next argues that the ALJ erred in finding unpersuasive the opinions of Ms. 4 Anglim. ECF No. 12 at 17-18. The record does not corroborate plaintiff's argument. 5 In a letter dated June 19, 2018, Amy Anglim, AMFT, supervised by Elizabeth Mattreoni, 6 LMFT, briefly described her knowledge of plaintiff's functioning and opined that his 7 "psychological and emotionally (sic) functioning are impaired due to his mental health issues." 8 AR 433. She described that she had provided plaintiff with weekly individual therapy for the 9 previous five weeks and indicated that he had been diagnosed with Major Depressive Disorder 10 and met the criteria for PTSD. Ibid. She stated that plaintiff demonstrated symptoms of "feeling 11 sad much of the time, lack of pleasure, self-blaming, feelings of guilt, suicidal ideation, low 12 energy and disruption in appetite and sleep," reportedly throughout much of his adult life but 13 "recently" those symptoms had "worsened." Ibid. She also stated that plaintiff exhibits "anxiety, 14 fear, startles easily, hyper-vigilance, intrusive memories, nightmares, flashbacks, somatic issues 15 triggered by external cues." Ibid. 16 The ALJ aptly identified that the opinion contained in Ms. Anglim's letter was vague and 17 only provided slight information from which plaintiff's specific RFC could be discerned. See AR 18 454. The ALJ also did not err in describing Ms. Anglim's letter as minimally supported, as it 19 appeared not to derive from any contemporaneous examination of plaintiff, but rather his 20 description of his complaints to her. See AR 1058; see generally 20 C.F.R. § 404.1520c(c)(1) 21 (supportability determined by "objective medical evidence and supporting explanations" to justify 22 the clinical opinion). The ALJ also did not err in finding that Ms. Anglim's opinion was 23 inconsistent with the clinical observations and opinion of Dr. Giannuli, AR 310-11, and with 24 treatment records memorializing improvement in plaintiff's symptoms. See AR 203, 307, 310- 25 11, 323-53, 359, 404, 812-1010, 1012-1185; Woods, 32 F.4th at 794. Plaintiff has not shown that 26 the ALJ's assessment of Ms. Anglim's opinion lacked substantial evidence in support of it. 27 In sum, the record demonstrates that the ALJ had before him an array of medical opinions 28 offering a gamut of beliefs about plaintiff's psychiatric functioning. These opinions came from 1 examining and non-examining sources, some more detailed in their opinions and explanations for 2 same than others; of those who had personally examined or treated plaintiff, these sources varied 3 too in the recency of their contact with plaintiff relative to the legally-relevant period of claimed 4 disability. The ALJ's opinion indicates that he endeavored to reconcile these disparities, as the 5 law requires him to do, see Tommasetti, 533 F.3d at 1041-42; Lingenfelter, 504 F.3d at 1042; 6 Benton, 331 F.3d at 1040, and he did so guided by the standards set forth in the governing 7 regulations and the totality of evidence before him. See 20 C.F.R. § 404.1520c. The record does 8 not substantiate plaintiff's argument that the ALJ cherry-picked portions of the record to support 9 a finding of non-disability. See ECF No. 12 at 14-15 & n.10. Rather, the record supports the 10

ALJ's finding that, considering all of the medical opinions and clinical observations contained therein, plaintiff's treatment and examination records, and plaintiff's reports of his functioning and activities, certain medical opinions were more persuasive than others. Plaintiff has not shown that, in this respect, there lacked substantial evidence for the ALJ's RFC determination that, *inter alia*, plaintiff's psychiatric impairments rendered him able "to perform medium work" and he could "occasionally interact with coworkers and the public." See AR 448. On this basis, plaintiff's motion fails.

2. ALJ's Evaluation of Plaintiff's Testimony

Plaintiff next claims error in the RFC to the extent the ALJ did not find credible certain of plaintiff's claims about the extent and nature of his limitations. ECF No. 12 at 19-20. Specifically, plaintiff argues that in determining his RFC, the ALJ unreasonably discounted plaintiff's claims of memory difficulties, difficulties in focusing, and difficulties interacting with others. See *ibid*. Substantial evidence supports the ALJ's determination. When determining a plaintiff's residual functioning capacity, the ALJ must consider the plaintiff's testimony describing their symptoms and engage in a two-step inquiry to determine whether such testimony is credible. *Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014).

"First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.'" *Lingenfelter*, 504 F.3d at 1035-36 (quoting *Bunnell v. Sullivan*, 947 F.2d 1 341, 344 (9th Cir.1991) (*en banc*) (internal quotation marks omitted)). If the claimant satisfies the first step of this analysis, and there is no evidence of malingering, "the ALJ can reject the claimant's testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so." *Garrison*, 759 F.3d at 1014-15 (quoting *Smolen v. Chater*, 80 5 F.3d 1273, 1281 (9th Cir. 1996)); see also *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

Here, the record indicates that, in his June 2017 Function Report, plaintiff reported that he could not focus on tasks for more than thirty-minute intervals, experienced short-term memory loss, experienced periods of "spac[ing] out" and feeling confused and bewildered, and required repeated instructions from coworkers. AR 200. In 2024 answers to interrogatories, plaintiff testified that in approximately 2011 he made threats to a coworker during a dispute and, in the ten years prior to that, had angry outbursts at coworkers and supervisors. AR 777. Plaintiff also testified in 2024 that, since 2012, he could not be around three or more people for more than one hour at a time without becoming overwhelmed, lived alone due to anxiety and panic attacks, and had minimal contacts with others. AR 781. In his assessment of plaintiff's RFC, the ALJ discounted plaintiff's descriptions, finding:

Although the claimant endorsed memory difficulties, Dr. Giannuli noted that the claimant was able to repeat five digits forward and four digits backward, while he recalled two of three words after a five-minute delay (Ex. 2F/5). At an evaluation on February 14, 2018, the claimant's short- and long-term memories were intact (Ex. 13F/58). While the claimant indicated a history of interpersonal conflicts at work prior to the

alleged onset date (Ex. 26E), testified that there were periods 19 when he would not leave his house, and noted that he lived alone due to interaction difficulties and had no visitors unless there was an emergency or 20 outpatient surgery that required a pick up or drop off (Ex. 26E/7), the record does not show that he was as limited as alleged. The claimant shopped in stores up to 21 six times per week without notations of interaction difficulties (Ex. 3E/7). He went to dinner with friends once per month, attended twelve step meetings 22 regularly, and attended church once per month (Ex. 3E/8). He tried to attend various twelve step meetings seven days per week (Ex. 26E/6). Dr. Giannuli 23 observed that the claimant was very polite and engaging (Ex. 2F/3). The claimant presented as pleasant and cooperative at the internal medicine consultative 24 examination (Ex. 3F/4). On January 11, 2018, the claimant reported that he had a good trip to Florida to visit his mother without indicating interaction difficulties to 25 the degree alleged (Ex. 6F/5). Although the claimant endorsed a history of being unable to maintain focus, Dr. Giannuli indicated that the claimant could add and 26 calculate multiple one- or two-digit numbers and solve money word problems in his head (Ex. 2F/5). Dr. Giannuli noted that the claimant was engaged and able to 27 spell words forwards and backwards (Ex. 2F/6). The claimant drove himself to the internal medicine consultative examination without endorsements of difficulties 28 with such task (Ex. 3F/3). He continues to drive without endorsements of 1 psychiatric limitations with such task. 2 AR 450-51. As noted, the ALJ ultimately determined that plaintiff's RFC encompassed a 3 capacity to "understand, remember, and carry out simple, routine, and repetitive tasks 4 using judgment limited to simple work-related decisions" and "occasionally interact with 5 coworkers and the public." AR 448. 6 There was no error in the analysis or conclusions of the ALJ concerning plaintiff's ability 7 to focus, remember, and engage with others. The reasons that the ALJ provided for rejecting 8 plaintiff's representations of the intensity, persistence, and limiting effects of his symptoms were 9 "specific, clear and convincing," *Garrison*, 759 F.3d at 1014-15, as the ALJ identified 10 contemporaneous evidence of plaintiff's treatment history that contradicted plaintiff's claims 11 describing his impairments. See, e.g., *Chaudhry v. Astrue*, 688 F.3d 661, 672-73 (9th Cir. 2012) 12 (holding ALJ was reasonable in relying on objective medical evidence of claimant's functioning 13 over claimant's subjective testimony); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 14 1161 (9th Cir. 2008) (holding ALJ reasonably relied on physician's assessment of claimant's 15 lifting capability in lieu of claimant's self-report, as "[c]ontradiction with the medical record is a 16 sufficient basis for rejecting the claimant's subjective testimony"); *Osenbrock v. Apfel*, 240 F.3d 17 1157, 1165-66 (9th Cir. 2001) (affirming an ALJ's rejection of claimant's allegations of disabling 18 pain, as they conflicted with records from her physical examinations). Here, the ALJ was 19 reasonable in relying on clinicians' assessments of plaintiff's memory and mental acuity over 20 plaintiff's representations, and the ALJ's depictions of the record in this regard was accurate. See 21 AR 309-10, 314-15, 867. The ALJ was also reasonable in partially discrediting plaintiff's 22 interrogatory descriptions of his impairments in anger regulation, getting along with others, and 23 managing his anxiety in social situations, in light of

other data, namely, contemporaneous 24 treatment and examination records, which memorialized greater levels of functioning, and 25 plaintiff's more specific testimony identifying particular tasks he regularly undertook. See AR 26 203-04, 307, 315, 359; *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (holding ALJ 27 reasonably discounted claimant's testimony concerning the alleged severity of her limitations 28 where that testimony was inconsistent with evidence of claimant's daily activities); *Lingenfelter*, 1 504 F.3d at 1040 (the ALJ may consider "whether the claimant engages in daily activities 2 inconsistent with the alleged symptoms" in determining whether claimant's claims are credible). 3 Plaintiff has not shown that the RFC lacks substantial evidence to support it in this regard. 4 3. ALJ's Evaluation of Plaintiff's Third-Party Evidence 5 Finally, plaintiff argues that the ALJ unreasonably found partially unpersuasive the 6 opinions of the third-party function report authored by Kelli Hoppe. ECF No. 12 at 20. Plaintiff 7 has not met his burden to show that the RFC lacks substantial evidence in this regard. 8 Ms. Hoppe, a friend of plaintiff's, submitted a Third-Party Function Report dated June 20, 9 2017, in which she stated that plaintiff's psychiatric impairments limited his ability to work by 10 causing loss of memory and concentration, isolation, poor planning, fatigue, frustration, and 11 quickness to anger. AR 243. She described that he had trouble remembering commitments and 12 appointments and was forgetful about his finances. AR 244-47. She reported that he had trouble 13 getting along with others because he "avoid[s] conflicts" and gets angry with authority and with 14 changes in his routine. AR 248-49. She also reported that he appeared "calmer" from taking 15 Cymbalta and had slowly improved in the thirteen years she had known him. AR 243, 250. 16 In assessing plaintiff's RFC, the ALJ credited Ms. Hoppe's report insofar as it conveyed 17 that plaintiff has severe psychiatric impairments. AR 451. Nonetheless, the ALJ found that 18 plaintiff's impairments were not as limiting as Ms. Hoppe described. *Ibid.* The ALJ discounted 19 Ms. Hoppe's opinion about plaintiff's memory impairments to the extent it conflicted with the 20 results of mental status examinations performed by clinicians. AR 451 (citing AR 309, 867). The 21 ALJ also discounted Ms. Hoppe's opinion about the extent of plaintiff's ability to interact with 22 others, as inconsistent with plaintiff's reports about his daily functioning and his presentation 23 during consultative examinations. AR 451 (citing AR 203-04, 305-18). 24 Substantial evidence supports the ALJ's conclusions about the weight and persuasiveness 25 of Ms. Hoppe's opinion. The ALJ was accurate in his depictions of the instances where clinical 26 reports, treatment and examination notes, and the plaintiff's own reports and testimony 27 contradicted the broad-brush descriptions provided by Ms. Hoppe. See AR 203-04, 305-18, 867. 28 As observed above, these are lawful bases on which the factfinder may find a claimant's own 1 | testimony not credible, see, e.g., *Smartt*, 53 F.4th at 499; *Lingenfelter*, 504 F.3d at 1040, and thus 2 || they provide a germane, reasonable basis for the ALJ to reject third-party evidence, as well. See 3 || generally *Molina v. Astrue*, 674 F.3d 1104, 1114-15 (9th Cir. 2012) (superseded by statute on 4 || other grounds).^{*} For these reasons, plaintiff has failed to show that the ALJ's RFC determination, 5 || and ultimately the finding of non-disability, lacked substantial evidence to support it. 6 V. Conclusion 7 For the

foregoing reasons, IT IS HEREBY ORDERED that: 8 1. Plaintiff's motion for summary judgment (ECF No. 12) is denied; 9 2. Defendant's cross-motion for summary judgment (ECF No. 16) is granted; 10 3. The Clerk of the Court shall enter judgment for defendant and close this case. 1] 12 || Dated: September 17, 2025 Lal □□ FeLZAELY

EDMUND F. BRENNAN

13 UNITED STATES MAGISTRATE JUDGE

14 15 16 17 18 19 20 21 Plaintiff argues that under the new regulations, the ALJ must provide "specific, clear, 2 and convincing" reasons to reject the opinions of a claimant's functioning offered by a third party. ECF No. 12 at 20. Plaintiff cites no law for this proposition and it would appear at odds 23 || with the new regulations' provision that the ALJ need not articulate how it considered evidence from nonmedical sources. See 20 C.F.R. §§ 404.1520c(d), 416.920c(d); Kennedy v. O'Malley, 24 || No. 22-35866, 2024 WL 242992, at *2 (9th Cir. Jan. 23, 2024); Fryer v. Kijakazi, No. 21-36004, 2022 WL 17958630, at *3 n.1 (9th Cir. Dec. 27, 2022). Should the Court of Appeals conclude 25 | that the ALJ was required to have provided specific, clear, and convincing reasons to partially 26 || teject Ms. Hoppe's statements, the court concludes that the ALJ's reasoning provided met this standard. See Chaudhry, 688 F.3d at 672-73; Carmickle., 533 F.3d at 1161; Osenbrock, 240 F.3d 27 || at 1165-66. 28